



Board of Adjustment



Agenda Numbers: 10 & 11
Case Numbers: BA-20100007/ZA-90105
BA-2010008/ZA-90106
Hearing Date: April 7, 2010

Appellant: Clara E. Rimbart
4309 Axtel St. SE
Albuquerque, NM 87105

Agent: N/A

Applicant: Clara E. Rimbart
4309 Axtel St. SE
Albuquerque, NM 87105

Agent: N/A

Site Location: 4307 Wallace St. SE

Zone Designation: M-H Mobile Home & Single-Family Residential

Recommendations: Denial

VICINITY MAP

Summary: These are two appeals concerning the Zoning Administrator's denial of rear and side yard setback variances for an unpermitted, partially constructed single-family dwelling on the property.

Staff Contact: Brennon Williams, Zoning Administrator

Attachments:

1. Appeal applications
2. Notice of Decisions (October 20, 2009, December 15, 2009, & January 19, 2010)
3. Original applications with provided site plan
4. Agency comments for ZA application
5. Site photographs, aerial photograph, zone atlas page

BA-20100007/ZA-90105

Clara E. Rimbart appeals the Zoning Administrator's denial of a variance of 5.4 feet to the required rear yard setback distance on Lot 4, Block J, Mountainview Addition, located at 4307 Wallace St. SE, zoned M-H, and containing approximately .169 acres. (P-14) (Original request submitted by Alexander A. & Clara E. Rimbart)

BA-20100008/ZA-90106

Clara E. Rimbart appeals the Zoning Administrator's denial of a variance of 1.44 feet to the required side yard setback distance on Lot 4, Block J, Mountainview Addition, located at 4307 Wallace St. SE, zoned M-H, and containing approximately .169 acres. (P-14) (Original request submitted by Alexander A. & Clara E. Rimbart)

BACKGROUND

The Requests

The appellant is requesting that the denial of two variance requests – one related to the required rear yard setback distance, the other concerning the required side yard setback distance – be overturned. Both of these concern an unpermitted, partially completed single-family dwelling on the property located toward the southeast side of the lot.

The Property

The subject site is located at 4307 Wallace St. SE, zoned M-H, and is approximately .169 acres in area. The property is currently developed with the single-family dwelling under construction and a mobile home. The site plan submitted with the original request indicates that the mobile home is “to be removed”.

The Hearing

The requests were first presented at the Zoning Administration hearing held on October 13, 2009. The owner, Clara Rimbart, and her son, John Rimbart, presented the requests. Mr. Rimbart testified that he believed the property line along the west side of the property was not accurately represented on the submitted site plan, as he thought the property owner to the west was encroaching into his mother's property, following a former vacation of the alleyway between the two lots. It was later determined that additional research by the Rimbarts into this issue, as well as the need to show proof of municipal water and sewer services to the county Environmental Health Office, was necessary. The matters were continued for two months.

At the scheduled hearing in December 2009, no one was in attendance to present the requests, and it was noted that the Environmental Health Office still did not have proof of connection. The matter was continued until the next month.

In January 2010, Mr. Rimbart again testified that he believed the adjacent property owner was encroaching onto his mother's property, but admitted he was unable to provide any additional evidence to this effect. Additionally, he admitted that he wasn't aware of any formal action to legally vacate the alleyway separating the two properties, but stated that other owners on the block had built into the alley and extended their fence-lines, and he and his mother wished to do the same. He also stressed that the expense of having to properly relocate the unpermitted construction project would create a financial hardship on his mother.

The Decisions

The Zoning Administrator denied both requests based on findings that the proposals did not meet the criteria for approval as outlined by Zoning Ordinance. Specifically, it was determined that the subject site did not possess any peculiar, exceptional, and unusual circumstances to justify the requests. It appeared initially that if the rear property line was further from the back façade of the house as reported, the need for a variance to that particular standard might be unnecessary. However, when that belief could not be substantiated, no other justification was presented. Arguments that the financial burden of correcting the self-imposed hardship would be too difficult to allow for proper modification of the issue do not meet the criteria for approval.

Similarly, no evidence was presented to address how the requests were limited to the extent to allow the owner reasonable use of the property. A cursory review of the site plan and Zone Atlas page showed the site to be

similar in size and shape to the other lots in the area. Only the improper placement of the dwelling resulted in the need for the requests.

APPLICABLE REGULATIONS

Comprehensive Zoning Ordinance of Bernalillo County.

Section 11. M-H Mobile Home and Single-Family Residential Zone.

- A. The regulations set forth in this section or set forth elsewhere in this ordinance, when referred to in this section, are the regulations in the M-H Mobile Home and Single-Family Residential Zone. The purpose of this zone is to provide for development of subdivisions or groups of contiguous parcels of land having a minimum total area of five acres or more, with a mixture of mobile homes and single-family residences on individual lots.
- B. Use Regulations. A building or premises shall be used only for the following purposes:
1. Prohibited Uses. The following uses are prohibited in this zone:
 - a. The open storage of inoperative vehicles or auto parts;
 - b. The open storage of trash or junk;
 - c. The open storage of large appliances;
 - d. Any use not designated a permissive use or conditional use in this zone, unless otherwise authorized by this Code; or
 - e. Any use not recognized as customarily incidental to a permitted use in this zone.
 2. Permissive Uses:
 - a. Any Permissive Use permitted in the R-1 Residential Zone.
 - b. One mobile home having a length of 40 feet or more per lot provided no other residence is located on the same lot.
 3. Conditional Uses. The following uses may be permitted if approved by the Zoning Administrator in accordance with the procedures and under the conditions set out in the Administrative Section of this ordinance with additional requirements deemed necessary to safeguard the best interest of the adjoining property, neighborhood and the community.
 - a. Any Conditional Use permitted in the R-1 Residential Zone.
 - b. One mobile home for a three-year period in addition to an existing single-family dwelling or mobile home on a lot, provided it complies with the following requirements:
 - (1) The mobile home may be used only by members of the immediate family for the purpose of providing assistance to those members of the family who are elderly, ill, or mentally or physically disabled as attested by a licensed physician.
 - (2) The mobile home shall be connected to water and sewage disposal facilities approved by the Department of Environmental Health.
 - (3) The mobile home must be placed on the property in conformance with the setback requirements and located at least 15 feet from any structures on the same or on adjoining property.
 - (4) Placement of a mobile home on the property will not seriously conflict with the character of the area or be detrimental to the values of surrounding properties.
- C. Height Regulations. Buildings and structures shall not exceed 26 feet or 2 1/2 stories in height, except as provided in The Supplementary Height and Area Regulation Section of this ordinance.
- D. Area Regulations:
1. Minimum Lot Area and Lot Width. Every lot shall have a minimum area of not less than three-quarters [of an] acre and a minimum lot width of 60 feet, except that where community water and sewer facilities are available, the lot area may be decreased to 8,000 square feet if located in the Developing, Established or Central Urban Areas, or 14,520 square feet if located in the Semi-Urban Area of the Albuquerque/Bernalillo County Comprehensive Plan.

2. Front Yard:
 - a. There shall be a front yard having a depth of not less than 20 feet, except as provided in the Supplementary Height and Area Regulation Section of this ordinance.
 - b. Where lots have double frontage, the required front yard shall be provided on both streets.
 3. Side Yard:
 - a. Except as hereinafter provided in the following paragraph and in the Supplementary Height and Area Regulation Section of this ordinance, there shall be a side yard on both sides of a building the aggregate width of which shall be not less than 14 feet; provided, however, that neither such yard shall be less than six feet in width.
 - b. Wherever a lot of record, at the effective date of this ordinance, has a width of less than 60 feet, each side yard may be reduced to a width of not less than ten percent of the width of the lot, but in no instance shall it be less than three feet.
 - c. On any lot occupied by a mobile home there shall be a side yard on each side of the mobile home of 15 feet in width, and in no instance shall a mobile home be located nearer than 15 feet to an accessory building.
 4. Rear Yard. Except as hereinafter provided in the Supplementary Height and Area Regulation Section of this ordinance, there shall be a rear yard having a depth of not less than 15 feet.
- E. Parking Requirements. Off-street parking for all uses must be provided in accordance with the regulations set forth in the Off-street Parking, Loading and Unloading Regulations Section of this ordinance.

Agency Comments

Comments received for this request from the Bernalillo County Building Department stated that proper construction permits would be necessary to allow the unpermitted house to remain. The Environmental Health Department indicated that proof of connection to municipal water and sewer services was necessary. The Bernalillo County Public Works Division had no adverse comments to the proposals.

INFORMATION SUBMITTED FOR THE APPEAL

The appellant indicates that she owns the properties immediately to the north and south of the subject site, and that no one is in opposition to the variance requests. Additionally, she notes that her purpose for this project will be to provide a residence for her and foster children.

ANALYSIS OF SUBMITTED MATERIAL

As with the noted difficulties from the ZA hearings, no evidence related to the criteria for approval as outlined in the ordinance has been presented for these requests. Staff understands the financial and emotional connections associated with this situation, but these reasons are outside the purview of consideration. Variances are only to be granted to allow an owner the opportunity to enjoy the rights and privileges they are being denied because of some unique, special aspect that severely limits the use of the property. These aspects are most often associated with the size, shape, and topography of the lot, but not with reports that correction of the problem will cost too much money or that the necessary work will create stress for the property owner.

The facts show that the property is identical in size and shape to the other lots on the same block and within the neighborhood. Other lots appear to be developed with single-family dwelling units and mobile homes consistent with the use proposed by the owner of the subject site. The only contributing factor for the placement of the structure within the rear and side yard setback areas is the design choice of the property owner. Although certainly after-the-fact, one of the important reasons for properly obtaining a construction permit prior to work is to ensure the proper location of the structure on the site. By forgoing this essential step in the permitting process, the owner has created the resulting hardship themselves.

Analysis Summary

CRITERIA	APPEAL INFORMATION	STAFF ANALYSIS
Property possesses peculiar, exceptional, and unique circumstances that are not found in the general area?	<ul style="list-style-type: none"> - This issue has not been addressed in the materials provided for the appeals. 	<ul style="list-style-type: none"> - The subject site is similar in size and shape to other properties on the same block and within the neighborhood. - Other properties in the area have been developed with similar uses as proposed by this owner. It appears the owner is seeking to design the property for activities common to the M-H zone. - Any "unique characteristics" of the site are due to the owner's placement of the unpermitted structure within the setback area; this does not meet the criteria for approval.
These unique circumstances are not common to the general area?	<ul style="list-style-type: none"> - This issue has not been addressed in the materials provided for the appeals. 	<ul style="list-style-type: none"> - The circumstances presented for approval of the requests center solely around the development desires of the property owner (dwelling placed in the setback areas). - No property characteristic (size, shape, topography, etc.) has been presented that would require the structure to be placed only in this location on the site.
The proposed variance request is limited to the extent necessary to allow the owner reasonable use of the property?	<ul style="list-style-type: none"> - This issue has not been addressed in the materials provided for the appeals. 	<ul style="list-style-type: none"> - The existing development on adjacent lots in the immediate area show the common aspects of the subject site. - The possibility of construction of a dwelling unit on the property that meets all setback standards indicates reasonable use of the lot.

CONCLUSION

The Zoning Ordinance authorizes the Board of Adjustment to hear and determine appeals from the decisions of the Zoning Administrator in denying applications for variances to the standards of the ordinance. However, based on the information provided with the appeal, as well as consideration of the lack of evidence in meeting the specific requirements for exceptionality, staff respectfully submits this matter to the BA with the following recommendations:

RECOMMENDATIONS

Denial of BA-20100007/ZA-90105 and BA-20100008/ZA-90106, thereby upholding the previous determinations of the Zoning Administrator.

Brennon Williams
Zoning Administrator